

Drafts

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DELORES ROSS, a minor by
her next Friend, Mary Alice
Benjamin, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,
by RAMSEY CLARK, Attorney
General of the United States,

Plaintiff-Intervenor,

v.

ROBERT ECKELS, as President of
the Board of Trustees of the
Houston Independent School
District, et al.,

Defendants.

CIVIL ACTION NO. 10444

NOTICE OF MOTION AND
MOTION TO INTERVENE
AS A PLAINTIFF

Please take notice that on _____,
at _____, or as soon thereafter as counsel may be heard,
in the courtroom of the United States District Court for the
Southern District of Texas, Federal Courthouse, Houston,
Texas, the United States will move this Court for leave to
intervene as a plaintiff in this action. This motion will
be made pursuant to Section 902 of the Civil Rights Act of
1964 and Rule 24 of the Federal Rules of Civil Procedure.
As supporting documents, plaintiff-intervenor has attached
a certificate of the Attorney General certifying that this
is a case of general public importance, an affidavit from
Assistant Attorney General John Doar, a letter from Mr.
Doar to the President of the Board of Trustees of the Houston
Independent School District (designated as "Exhibit A"), and
a Memorandum of Points and Authorities.

As grounds for this motion, we state that this is a case seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment and that this motion for intervention is timely within the meaning of section 902 of the Civil Rights Act of 1964. This intervention is timely because it now appears that the efforts of the Department of Justice to obtain voluntary compliance on the part of the defendants with constitutional requirements regarding school desegregation have been unsuccessful. We set forth the following chronology of attempts made by Assistant Attorney General John Doar to obtain voluntary compliance, commencing in the Spring of 1965 and culminating in the Board's failure to respond meaningfully to a letter of December 23, 1966, only for the purpose of establishing the timeliness of this motion for intervention:

In the Spring of 1965, Mr. Doar in discharging his responsibilities under the Civil Rights Act of 1964 met with representatives of the Houston Independent School District and wrote Joe H. Reynolds, attorney for the Board of Trustees, on June 19, 1965, with respect to the progress of school desegregation. Among suggested provisions for a full desegregation plan, Mr. Doar included the immediate desegregation of the twelfth grade. On June 21, 1965, the Board of Trustees adopted a desegregation plan generally accelerating the pace of desegregation, but refused to *desegregate grade twelve until September, 1967.* Shortly thereafter, on July 26, 1965, Mr. Doar wrote Mr. Reynolds again suggesting immediate desegregation of grade twelve. Mr. Reynolds replied on July 30, 1965, to the effect that the Houston Independent School District would not take the action suggested in that "the question of the Houston School District is now before the Court."

On October 27, 1965, this Court ordered the defendants to desegregate grade twelve in September, 1966. On

November 15, 1965, Mr. Doar wrote Mr. Reynolds inquiring as to the prospects of desegregation of all grades in September, 1966, inasmuch as the ninth grade would remain as the only segregated grade in the school system in September, 1966. Mr. Reynolds indicated that the Board would not comply with that request.

On May 31, 1966, Mr. Doar wrote Mr. Reynolds, suggesting revisions in the School District's desegregation plan, including desegregation of grade nine, teacher desegregation and the elimination of racial factors in the assignment of students in desegregated grades. Mr. Reynolds replied on June 2, 1966, that Mr. Doar's letter would be studied and answered in the near future. No further response was received.

On August 21, 1966, Mr. Doar wrote Robert Y. Eckels, then President of the Board of Trustees of the Houston Independent School District, at Mr. Eckels' request, indicating in detail those matters requiring action before the beginning of the 1966-67 school year. On August 30, 1966, Superintendent Glenn Fletcher replied to Mr. Doar's letter to Mr. Eckels advising, in essence, that the School District's policies and procedures questioned by Mr. Doar were adequate to comply with federal law. Shortly thereafter, Mr. Eckels extended an invitation to Mr. Doar to visit the schools in the District and examine School District records. ^{Attorney on Mr. Doar's staff examined School District records on November 10, 11, 14 and 15, 1966.} Mr. Doar visited several schools, talked with administrators of these schools, and discussed the operation and policies of the School District with Mr. Reynolds and Mr. Fletcher on November 17 and 18, 1966.

On December 23, 1966, after full examination of material and information made available to Department personnel in Houston, Mr. Doar wrote Mr. Eckels explaining in detail

his findings and the adjustments necessary for the operation of the School District to comport with constitutional standards. Mr. Doar's letter of December 23, 1966, a copy of which is attached to this motion, was concerned with three general areas of the school board's performance: (1) faculty desegregation; (2) freedom-of-choice procedures; and (3) school bus transportation. The following is a summary of the contents of the letter:

(1) Faculty Desegregation.

The letter stated that no faculty desegregation has occurred in Houston. With few exceptions, teachers have been assigned to schools on the basis of race, even in schools opened for the first time in September, 1966. In order to correct deficiencies in the area of teacher desegregation, the school board was requested to provide the Department with a statement of (a) instructions to personnel officers regarding faculty assignments and reassignments; (b) a program for assigning new teachers and reassigning present teachers as to abolish the racially segregated character of ^{the schools;} ~~faculty assignments~~ and (c) procedures for the staffing of new schools to insure the desegregation of faculties of these schools.

(2) Freedom of Choice Procedures.

The letter stated that the board's so-called freedom of choice plan was deficient in that the notice to parents advising them of their choice had neither explained the availability of bus transportation, the basis of assignment where choices could not be honored because enrollment exceeded capacity at any school, nor the procedures for the nonracial assignment of children who fail to exercise a choice. The letter also stated that aside

from the defects in the notice, the freedom of choice plan was inadequate because no procedures had been established for the assignment of students who did not exercise^a choice, ~~or whose choice could not be honored because of overcrowding.~~

The Board of Trustees was requested to furnish information on specific plans and procedures the Board has adopted regarding (a) the method by which students or their parents would exercise a free choice of schools; (b) advising parents of such free choice, the availability of bus transportation and the course to be followed when enrollment exceeds capacity; (c) the transfer of records of students completing the sixth and ninth grades; (d) transfer of students after enrollment at the commencement of the school year; and (e) nonracial assignment of students who fail to exercise a choice.

(3) School Bus Transportation.

The letter^{is} stated that the bus transportation system^{is} operated in a manner inconsistent with the obligation to desegregate the schools. Many bus routes appeared to have been established to serve the traditional dual school system and the Board of Trustees was requested in the letter to furnish a statement of their current transportation policy.

In order that the Board of Trustees and the Department of Justice would be able to evaluate the performance of the school Board to desegregate² its school system, the Board was requested to compile and furnish statistical information on distribution of teachers and students according to race

and to provide an opportunity for review of their records, or those of its administrative staff, regarding faculty selection and assignment.

As of the date of the filing of this motion, no response to Mr. Doar's letter of December 23, 1966, has been received.

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